

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEFFREY T. LEWIS and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Warwick, RI

*Docket No. 98-2514; Submitted on the Record;
Issued April 18, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained a traumatic injury on June 14, 1998 in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.¹ These are the essential elements of each and every claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

In the present case, on June 4, 1998, appellant, then a 41-year-old air traffic controller, filed a claim for a traumatic injury alleging that on that date he suffered emotional stress when he was involved in a loss of separation between aircraft. On the claim form, both a witness to the event and a supervisor at the employing establishment confirmed that appellant had been involved in an operational error. He stopped work on June 4, 1998 and was released to return to work on June 16, 1998.³ In a decision dated July 30, 1998, the Office denied appellant's claim stating that "there is insufficient or conflicting evidence in the file regarding whether or not the claimed events, incidents or exposures occurred at the times, places and in the manners alleged."

¹ *Ronelle Smith*, 47 ECAB 781 (1996); *Elaine Pendelton*, 40 ECAB 1143 (1989).

² The Office of Workers' Compensation Programs' regulations clarify that a traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas occupational disease refers to injury produced by employment factors which occur or are present over a period longer than a single workday or shift; *see* 20 C.F.R. §§ 10.5(a)(15), (16).

³ It is unclear from the record exactly what date appellant returned to work.

The record does not disclose any conflicting or contrary evidence regarding whether the incident occurred or whether the incident was in the performance of duty. Appellant's supervisor stated on the Form CA-1 that he observed appellant's involvement in an operational error involving the loss of separation between two aircrafts. The supervisor went on to say that he only controverted the claim because "the employee was performing a job consistent with his job description." The Board therefore finds that the incident occurred in the performance of duty at the time, place and in the manner alleged.

In support of his claim, appellant submitted a medical note from Dr. Peter M. Small, a Board-certified family practitioner, dated June 5, 1998 on which he stated that appellant had been diagnosed with transient situational disturbance and acute stress and was unable to work from June 5 to June 16, 1998. He also submitted a letter dated June 15, 1998 from Dr. Small, which stated:

"[Appellant] (DOB November 4, 1956) may return to work on June 16, 1998 with no restrictions. [He] was absent from work because of acute stress and a transient situational disturbance. During his time out of work, [appellant] received [medication] to assist him in regulating his sleep pattern. His course of medication has been completed and additional medication is not required."

While admittedly appellant is in a high stress occupation, Dr. Small did not specifically state in either report the reason he was treating appellant or that loss of separation between two airplanes on June 4, 1998 caused appellant's "transient situation disturbance." Nor did he indicate that the diagnosed condition was the reason appellant was temporarily disabled for work. In this connection, Dr. Small's medical report is insufficient to meet appellant's burden of proof. Nonetheless, the Board is of the opinion that his reports, coupled with the supervisor's admitted knowledge of the operational error and the immediate departure of appellant on sick leave following the operational error, constitutes sufficient evidence to require further development of the claim by the Office.⁴

On remand, the Office should request Dr. Small to clarify his medical reports by specifying the specific reasons for the medical treatments rendered to appellant on June 5, 1998, the day following the incident which occurred in the performance of duty, the history given to him by appellant, the specific treatment rendered and whether such treatment was causally related to the history reported to him by appellant. Following such further development as the Office may deem necessary, a *de novo* decision should be rendered.

⁴ John J. Carlone, 41 ECAB 354 (1989); Horace Langhorne, 29 ECAB 820 (1978).

The decision of the Office of Workers' Compensation Programs dated July 30, 1998 is hereby set aside and the case remanded for further development and a *de novo* decision not inconsistent with this decision of this Board.

Dated, Washington, D.C.
April 18, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member